

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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PHILLIP HOFF,

Plaintiff,

v.

COUNTY OF SISKIYOU, an administrative body; ANDREA FOX, ex-HOA manager; and DOES 1-10, inclusive,

Defendants.

No. 2:23-cv-00535 WBS JDP

MEMORANDUM AND ORDER RE:
MOTION TO DISMISS

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Phillip Hoff ("plaintiff") brought this action against the County of Siskiyou and Andrea Fox (collectively "defendants"), for violations of federal and state law related to plaintiff's inability to obtain a permit for a Conex container¹ on his property. Although plaintiff has amended his complaint twice, the original Complaint (Docket No. 1) and First Amended

¹ A "Conex container" is a large cargo container.

1 Complaint (Docket No. 6) were voluntarily superseded by
2 plaintiff's Second Amended Complaint "SAC" (Docket No. 13) before
3 any responsive pleadings were filed.

Plaintiff asserts claims for violation of the
Fourteenth Amendment's due process clause (Claim 1); unlawful
search and seizure under the Fourth Amendment (Claim 2);
violation of the Fourteenth Amendment's equal protection clause
(Claim 3); disability discrimination under 42 U.S.C. § 12132
(Claim 4); financial elder abuse under California Welfare &
Institutions Code § 15610.30 (Claim 5); negligence (Claim 6); and
regulatory taking under the Fifth Amendment (Claim 7).

12 Before the court is defendants' motion to dismiss the
13 SAC. (Docket No. 14.) The motion was set for hearing on
14 September 5, 2023. Shannon Hewitt appeared for the defendants.
15 No appearance was made on behalf of plaintiff. Although it was
16 made abundantly clear that the hearing was to be held in person,
17 when the clerk called plaintiff's counsel on the afternoon of the
18 hearing, plaintiff's attorney Reshma Kamath informed the clerk
19 that she thought the hearing was going to be held remotely.
20 Defendant's motion was taken under submission, and the court
21 decides it in this Order.

22 The day following the hearing, plaintiff's counsel
23 filed a pleading (Docket No. 19) suggesting that she elected not
24 to appear at the hearing because her arguments were adequately
25 set forth in her written opposition and criticizing the court for
26 the way the proceeding was handled.²

2 Counsel seems to attribute the language in the minutes
28 to the court. The minutes are the clerk's record of the

1 I. Factual Allegations³

2 Plaintiff is 70 years old and is disabled due to a
3 traumatic brain injury. (SAC ¶ 2.) Plaintiff has two Conex
4 containers and four trailers on his vacant, undeveloped property
5 in Siskiyou County. (Id. ¶¶ 17, 51.) In 2021, plaintiff began
6 seeking a permit from the County for his two Conex containers.
7 (Id. ¶ 17.) At some point, the County gave plaintiff approval
8 for the permits over the phone for both Conex containers. (Id. ¶
9 21.) Plaintiff was subsequently issued a permit for the first
10 Conex container. (Id. ¶ 32.)

11 On November 29, 2021, plaintiff and Defendant Fox⁴ had
12 a telephone conversation during which Fox informed plaintiff that
13 he could not have the permit for his second Conex container.
14 (Id. ¶ 23.) Despite Fox's representation, on or about January 7,
15 2022, the County gave plaintiff permit approval over the phone
16 for his second Conex Container. (Id. ¶ 33.) However, plaintiff
17 was never issued the permit for the second Conex container. (Id.
18 ¶ 55.)

19 Fox then issued a citation for the second Conex

20 proceedings, prepared by the clerk without input from the
21 presiding judge.

22 ³ The court takes the allegations of the Second Amended
23 Complaint as true.

24 ⁴ Defendant Fox is the current Compliance Officer for the
25 County. (SAC ¶ 4.) She was previously the manager for the
26 homeowner association, Klamath Country Estates Owners'
27 Association, Inc. (the "Association"). (Id.) Plaintiff alleges
28 that he "acted as a whistle-blower regarding [the Association's]
nefarious practices pertaining to meth growth and illegal
activities on adjoining land." (Id.) It is unclear to the
court what "meth growth" refers to.

1 container as being in violation of county regulations. (Id. ¶
2 34.) However, plaintiff did not receive any notices of the
3 citation until months later when defendants emailed the notices.
4 (Id. ¶ 36.)

5 In order to obtain a permit for the second Conex
6 container, plaintiff applied for a variance hardship application.
7 (Id. ¶ 40.) He made timely payments in excess of \$700, retained
8 a surveyor, and obtained approvals from all necessary parties.⁵
9 (Id. ¶ 40.) The County refused to grant plaintiff's hardship
10 variance application unless plaintiff first signed an
11 indemnification agreement.⁶ (Id. ¶ 41.)

12 On September 21, 2022, the administrative citation
13 appeals hearing was held regarding the citation plaintiff had
14 received on his second Conex container. (Id. ¶ 42.) At the
15 hearing, defendants stated that plaintiff was required to put up
16 privacy screening on his fences, which plaintiff had already
17 done. (Id. ¶ 43.) The County still refused to vacate the
18 citation for plaintiff's second Conex container. (Id. ¶ 44.)

19 Because plaintiff was unable to obtain a permit for the
20 second Conex container, he had to move the container by crane to
21 a different storage yard. (Id. ¶ 57.) Plaintiff alleges that he
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23 ⁵ Plaintiff does not explain who he made these payments
24 to or what regulation required these payments, a surveyor, or
25 approval from various parties.

26 ⁶ Plaintiff does not explain why the County required
27 plaintiff to first sign an indemnification agreement or whether
28 signing an indemnification agreement was a standard condition in
order to obtain a variance hardship application.

1 has suffered damages in excess of \$5.6 million.⁷ (Id. ¶ 58.)

2 II. Legal Standard

3 Federal Rule of Civil Procedure 12(b) (6) allows for
4 dismissal when the plaintiff's complaint fails to state a claim
5 upon which relief can be granted. See Fed. R. Civ. P. 12(b) (6).
6 "A Rule 12(b) (6) motion tests the legal sufficiency of a claim."
7 Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). The inquiry
8 before the court is whether, accepting the factual allegations in
9 the complaint as true and drawing all reasonable inferences in
10 the non-moving party's favor, the complaint has stated "a claim
11 to relief that is plausible on its face." Bell Atl. Corp. v.
12 Twombly, 550 U.S. 544, 570 (2007).

13 Courts are not, however, "required to accept as true
14 allegations that are merely conclusory, unwarranted deductions of
15 fact, or unreasonable inferences." Sprewell v. Golden State
16 Warriors, 266 F.3d 979, 988 (9th Cir. 2001); see Bell Atl. Corp.,
17 550 U.S. at 555. Accordingly, "for a complaint to survive a
18 motion to dismiss, the non-conclusory 'factual content,' and
19 reasonable inferences from that content, must be plausibly
20 suggestive of a claim entitling the plaintiff to relief." Moss
21 v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009) (quoting
22 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)).

23 III. Discussion

24 A. Due Process (Claim 1)

25 The Due Process Clause of the Fourteenth Amendment
26 states: "No State shall . . . deprive any person of life,

27 ⁷ Plaintiff does not explain how he calculated \$5.6
28 million in damages.

1 liberty, or property, without due process of law." U.S. Const.
2 amend XIV, § 1. To succeed on either a procedural or
3 substantive due process claim, a plaintiff "must first
4 demonstrate that he was deprived of a constitutionally protected
5 property interest." Gerhart v. Lake Cnty., Mont., 637 F.3d 1013,
6 1019 (9th Cir. 2011). "In some instances, a person can have a
7 constitutionally protected property interest in a government
8 benefit, such as a license or permit." Id. (citing Bd. of
9 Regents of State Colls. v. Roth, 408 U.S. 564, 577 (1972)).
10 "[A]n entitlement to a government permit exists when state law or
11 regulation requires that the permit be issued once certain
12 requirements are satisfied." Id. at 1020.

13 Here, plaintiff contends that he has a protected
14 property interest in a permit for his second Conex container.
15 However, plaintiff alleges no facts to support his contention.
16 Plaintiff does not allege any statutory language, let alone cite
17 any applicable regulation, which would "significantly constrain
18 [the County's] discretion to issue the permit[]" See
19 Shanks v. Dressel, 540 F.3d 1082, 1091 (9th Cir. 2008); cf.
20 Kerley Indus., Inc. v. Pima Cnty., 785 F.2d 1444, 1146 (9th Cir.
21 1986) (finding state law entitled plaintiff to a permit where the
22 state law "provide[d] for the issuance of conditional permits . .
23 . [and] contain[ed] detailed provisions for their suspension and
24 revocation").

25 Further, plaintiff does not allege facts sufficient to
26 show that his permit was revoked. See FlightCar, Inc. v. City of
27 Millbrae, No. C 13-5802, 2014 WL 2753879, at *4 (N.D. Cal. June
28 14, 2014) ("a municipality's power to revoke" an issued permit

1 "is limited") (citing Korean Am Legal Advocacy Found. v. City of
 2 L.A., 23 Cal. App. 4th 376, 393 n.5 (2nd Dist. 1994); Kerley
 3 Indus., 785 F.2d at 1146). Moreover, the fact that plaintiff
 4 received a permit for his first Conex container does not entitle
 5 him to a permit for the second container. See Gerhart, 637 F.3d
 6 at 1021 ("[A] government body's past practice of granting a
 7 government benefit is insufficient to establish a legal
 8 entitlement to the benefit.").

9 Because plaintiff has not shown that he was "deprived
 10 of a constitutionally protected property interest," id. at 1019,
 11 he cannot sustain either a procedural or substantive due process
 12 claim.⁸ Accordingly, the court will grant defendants' motion to
 13 dismiss Claim 1.

14 B. Fourth Amendment (Claim 2)

15 The Fourth Amendment protects "[t]he right of the
 16 people to be secure in their persons, houses, papers, and
 17 effects, against unreasonable searches and seizures"
 18 U.S. Const. amend IV. "A seizure is a 'meaningful interference
 19 with an individual's possessory interest in his property.'"
 20 Brewster v. Beck, 859 F.3d 1194, 1196 (9th Cir. 2017) (quoting
 21 Soldal v. Cook Cnty., 506 U.S. 56, 61 (1992)).

22 Here, plaintiff alleges facts showing numerous
 23 interferences with his property including trespass, stolen solar
 24 panels and batteries, broken windows, cut locks, and stolen video
 25 cameras. (SAC ¶¶ 37, 46.) However, the only allegation in the
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27 ⁸ It is unclear from the Second Amended Complaint whether
 28 plaintiff is asserting a procedural or substantive due process
 claim or both.

1 Second Amended Complaint which would suggest that the County
2 interfered with plaintiff's property is a comment from
3 plaintiff's neighbor stating that the County "cut your gate
4 because you keep calling them about other people and they are
5 calling them about you." (*Id.* ¶ 47.) This sole allegation does
6 not plausibly suggest that defendants were responsible for the
7 interference to plaintiff's property. See Ashcroft, 556 U.S. at
8 678 ("A claim has facial plausibility when the plaintiff pleads
9 factual content that allows the court to draw the reasonable
10 inference that the defendant is liable for the misconduct
11 alleged."). Further, plaintiff has alleged no facts which
12 connect defendants to the interferences of trespass, theft, or
13 vandalism.

14 Because plaintiff has not alleged facts sufficient to
15 show that it was defendants who interfered with his property, he
16 cannot state a Fourth Amendment unreasonable seizure claim
17 against defendants. Accordingly, the court must grant
18 defendants' motion to dismiss Claim 2.

19 C. Equal Protection (Claim 3)

20 The Equal Protection Clause guarantees, "No state shall
21 . . . deny to any person within its jurisdiction the equal
22 protection of the laws." U.S. Const. amend XIV, § 1. "[A]n
23 equal protection claim can in some circumstances be sustained
24 even if the plaintiff has not alleged class-based discrimination,
25 but instead claims that she has been irrationally singled out as
26 a so-called "class of one.'" "Gerhart, 637 F.3d at 1021 (quoting
27 Engquist v. Or. Dep't of Agric., 553 U.S. 591, 601 (2008))
28 (additional citation omitted).

1 To succeed on a “class of one” claim, plaintiff must
 2 demonstrate that defendants: “(1) intentionally (2) treated
 3 [plaintiff] differently than other similarly situated property
 4 owners, (3) without a rational basis.” *Id.* at 1022. A plaintiff
 5 “must [also] demonstrate that the level of similarity between
 6 plaintiff and the persons with whom they compare themselves is
 7 extremely high.” *Hardesty v. Sacramento Metro. Air Quality Mgmt.*
 8 *Dist.*, 935 F. Supp. 2d 968, 983 (E.D. Cal. 2013) (Mueller, J.)
 9 (quotations and citations omitted); see *Warkentine v. Soria*, 152
 10 F. Supp. 3d 1269, 1294 (E.D. Cal. 2016) (Seng, J.) (same).

11 “[T]o ‘be considered similarly situated, the class of
 12 one challenger and his comparators must be *prima facie* identical
 13 in all relevant respects or directly comparable in all material
 14 respects.’” *Warkentine*, 152 F. Supp. 3d at 1294 (quoting *United*
 15 *States v. Moore*, 543 F.3d 891, 896 (7th Cir. 2008)). “Strict
 16 ‘enforcement of the similarly-situated requirements is a vital
 17 way of minimizing the risk that, unless carefully circumscribed,
 18 the concept of a class-of-one equal protection claim could
 19 effectively provide a federal cause of action for review of
 20 almost every executive and administrative decision’ made by state
 21 actors.” *Id.* (quoting *JDC Mgmt., LLC v. Reich*, 644 F. Supp. 2d
 22 905, 927 (W.D. Mich. 2009)); *Garden City, Inc. v. San Jose*, No.
 23 13-cv-0577, 2013 WL 4766748, at *4 (N.D. Cal. Sept. 5, 2013)
 24 (same).

25 Here, plaintiff alleges that nearby residents have not
 26 been issued citations despite their properties being “crowded
 27 with trailers and motor homes in violation of other County
 28 ordinances and/or regulations.” (SAC ¶ 29.) Plaintiff further

1 alleges that he has been "unfairly and unlawfully" targeted by
2 defendants. (*Id.* ¶ 88.) While these allegations tend to show
3 that plaintiff was treated differently, plaintiff has failed to
4 allege facts sufficient to show that he and the nearby residents
5 are "identical" or "directly comparable in all material
6 respects." Warkentine, 152 F. Supp. 3d at 1294. For example,
7 plaintiff has not alleged that the neighboring properties "were
8 violating the [county] code in a manner substantially similar to
9 plaintiff's own cited violations." See Grant v. Corral, No.
10 2:19-cv-01495 MCE CKD, 2021 WL 826203, at *8 (E.D. Cal. Mar. 4,
11 2021) (finding plaintiff failed to show the necessary "degree of
12 similarity between his property conditions and his neighbors");
13 see also Scocca v. Smith, 912 F. Supp. 2d 875, 5 (N.D. Cal. 2012)
14 ("[C]ursory allegations on being similarly situated are
15 especially problematic where, e.g., 'inherently subjective and
16 individualized enforcement of health and safety regulations' are
17 at issue"). Moreover, plaintiff did not allege how many of the
18 neighboring properties have not been cited for the same
19 violation, nor do he even reference the county code under which
20 he was allegedly cited.

21 Merely alleging that plaintiff is treated differently
22 from nearby residents is too vague to sustain a "class of one"
23 equal protection claim. See Warkentine, 152 F. Supp. 3d at 1295
24 ("While there may be some similarities . . . , including
25 proximity of real property and accumulation of similar items on
26 the properties, this does not amount to 'an extremely high degree
27 of similarity' necessary for this claim."). Plaintiff has
28 therefore failed to allege facts sufficient to state an equal

1 protection claim.⁹ Accordingly, the court will grant defendants'
2 motion to dismiss Claim 3.

3 D. Disability Discrimination (Claim 4)

4 42 U.S.C. § 12132 provides that "no qualified
5 individual with a disability shall, by reason of such disability,
6 be excluded from participation in or be denied the benefits of
7 the services, programs, or activities of a public entity, or be
8 subjected to discrimination by any such entity." 42 U.S.C. §
9 12132 (emphasis added). Here, plaintiff's only allegation in
10 support of his disability discrimination claim is that Fox
11 "harbored a discriminatory animus against [plaintiff] due to his
12 disability."¹⁰ (SAC ¶ 27.) However, a "mere conclusory
13 statement[]", without more, is insufficient to state a claim.
14 See Ashcroft, 556 U.S. at 678. Because plaintiff has not alleged
15 any facts showing he was discriminated against on the basis of
16 his disability, the court must grant defendants' motion to
17 dismiss Claim 4.

18 E. Regulatory Taking (Claim 7)

19 The Takings Clause of the Fifth Amendment provides:

20 "[N]or shall private property be taken for public use, without

21 9 Plaintiff also attempts to advance his equal protection
22 claim on the basis of disability and age. (See SAC ¶ 87.)
23 However, plaintiff alleges no facts to support this position.
24 Plaintiff's sole allegation that "[d]efendants have a pattern and
25 practice of refusing to issue hardship variances to individuals
with disabilities and those similar in age to [plaintiff]" (*id.*),
is conclusory and therefore insufficient to state a claim. See
Sprewell, 266 F.3d at 988 (court need not "accept as true
allegations that are merely conclusory").

26
27 10 Plaintiff alleges he is disabled due to a traumatic
28 brain injury. (SAC ¶ 2.) The Second Amended Complaint provides
no other factual allegations regarding his disability.

1 just compensation." U.S. Const. amend V. "When the government
2 physically acquires private property for a public use, the
3 Takings Clause imposes a clear and categorical obligation to
4 provide the owner with just compensation." Cedar Point Nursery
5 v. Hassid, 141 S. Ct. 2063, 2071 (2021). A taking also occurs
6 where the government "imposes regulations that restrict an
7 owner's ability to use his own property." Id. However, "the
8 mere assertion of regulatory jurisdiction by a governmental body
9 does not constitute a regulatory taking." United States v.
10 Riverside Bayview Homes, Inc., 474 U.S. 121, 126 (1985).

11 Here, plaintiff's regulatory taking claim is entirely
12 premised on his inability to obtain a permit for his second Conex
13 container. However, such allegations are insufficient to state a
14 regulatory taking claim because "neither the imposition of the
15 permit requirement itself nor the denial of a permit necessarily
16 constitutes a taking . . ." Id. at 127. Accordingly, the
17 court must grant defendants' motion to dismiss Claim 7.¹¹

18 F. State Law Claims (Claims 5 and 6)

19 Although defendants raised the argument that the state
20 law claims were barred by Government Claims Act, plaintiff did
21 not address that argument in his Opposition. For the following

22 ¹¹ Section 1983 provides a remedy for violations of
23 constitutional rights by persons acting under the color of state
24 law. 42 U.S.C. § 1983. Because plaintiff has not alleged facts
25 sufficient to support any of his federal claims, the court
26 declines to address the parties' arguments regarding Monell
27 liability and qualified immunity. See Scott v. Henrich, 39 F.3d
28 912, 916 (9th Cir. 1994) (municipal liability "is contingent on a
violation of constitutional rights"); Pearson v. Callahan, 555
U.S. 223, 231 (2009) ("[Q]ualified immunity protects government
officials 'from liability for civil damages insofar as their
conduct does not violate clearly established . . . constitutional
rights'" (citation omitted)).

1 reasons, defendants' argument appears to have merit. Under the
2 Government Claims Act, California "state law tort claims against
3 both individual and public entity defendants are barred unless" a
4 plaintiff presents them to defendants before filing a lawsuit.
5 Karim-Panahi v. L.A. Police Dep't, 839 F.2d 621, 627 (9th Cir.
6 1988); see Cal. Gov. Code §§ 905, 945.4, 950.2. "'The claim
7 filing requirement of the Government Claims Act serves several
8 purposes: (1) to provide the public entity with sufficient
9 information to allow it to make a thorough investigation of the
10 matter; (2) to facilitate settlement of meritorious claims; (3)
11 to enable the public entity to engage in fiscal planning; and (4)
12 to avoid similar liability in the future.'" Garber v. City of
13 Clovis, 698 F. Supp. 2d 1204, 1215 (E.D. Cal. 2010) (Ishii, J.)
14 (quoting Page v. MiraCosta Cmty. College Dist., 180 Cal. App. 4th
15 471, 493 (2009)) (additional citation omitted).

16 Here, plaintiff makes no suggestion that he presented
17 his state law claims for negligence and financial elder abuse,
18 Cal. Wel. & Inst. Code § 15610.30, before filing the present
19 lawsuit. Accordingly, because plaintiff's state law claims are
20 therefore barred by Cal. Gov. Code §§ 905, 945.4, and 950.2, the
21 court must grant defendants' motion to dismiss Claims 5 and 6.
22 If plaintiff has facts to establish that he did file an
23 appropriate government claim on his state law causes of action or
24 that the filing of such claim was somehow not required, he should
25 allege those facts in his Third Amended Complaint.

26 IT IS THEREFORE ORDERED that defendants' motion to
27 dismiss (Docket No. 14) be, and the same hereby is, granted.
28 Plaintiff has twenty days from the date of this Order to file an

1 amended complaint, if he can do so consistent with this Order.

2 Dated: September 6, 2023



3 WILLIAM B. SHUBB

4 UNITED STATES DISTRICT JUDGE

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